



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 13, 2018

SENT VIA EMAIL

Kimberly Riley
7715 Jarboe Street
Kansas City, Missouri 64114
kriley88@yahoo.com

Re: Raytown C-2 School District
OCR Case Number 07-16-1026

Dear Ms. Riley:

On November 2, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint against the Raytown C-2 School District (District), Raytown, Missouri, alleging discrimination on the basis of disability.

OCR is responsible for enforcing:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA).
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of FFA from the Department and a public entity, the District is subject to Section 504 and Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR investigated whether the District treats students with disabilities differently than students without disabilities by adopting a policy that allows parents classroom visits to observe their children who are students without disabilities but denies the same opportunity to the parents of students with disabilities.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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Prior to the conclusion of the investigation, the District submitted a signed Resolution Agreement (Agreement) March 12, 2018 (copy enclosed) that, when fully implemented, will resolve the allegations. This letter summarizes the information gathered during the investigation to date, and how the complaint allegations were resolved.

In the remainder of this letter, you are referred to as “the Complainant” and your son is referred to as “the Student.” To protect individuals’ privacy, the name of employees, witnesses, and other parties also were not used in the letter.

Legal Standards

Section 504 and Title II contain similar anti-discrimination provisions prohibiting recipients of Federal financial assistance and public entities, respectively, from discriminating against individuals on the basis of disability. Section 504 mandates “no otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹ Title II states “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”²

The regulations implementing Title II delineate specific areas of prohibited discriminatory conduct by public entities, including prohibitions that a public entity may not: 1) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service, or 2) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.³

Different, or disparate, treatment is a legal theory that requires a finding of intentional discrimination on the basis of disability, and evidence of discriminatory intent may be direct or circumstantial. OCR initially examines whether there is direct evidence of discriminatory intent by a recipient based on disability. Direct evidence includes conduct or statements by persons involved in the decision-making process reflect a discriminatory motive. Any direct evidence of discrimination must show that discrimination motivated the denial of an educational benefit or other adverse action.

In cases where there is no direct evidence of discrimination or the direct evidence is not strong, OCR reviews the evidence using the general *prima facie* analysis for disability discrimination which requires a showing of the following elements: 1) the student is a person with a disability as defined by Section 504; 2) the student is an otherwise qualified individual; 3) the District is subject to Section 504 and Title II, and 4) the District denied the student an opportunity to participate in or benefit from the District’s aids, services, or programs, or otherwise discriminated against complainant because of complainant’s disability.

¹ 29 U.S.C. § 794.

² 42 U.S.C. § 12132.

³ 28 C.F.R. § 35.130(b)(1)(i) and (ii). Section 504 contains identical prohibitions at 34 C.F.R. § 104.4(b)(1)(i)&(ii).

If a *prima facie* case is established, an inference of discrimination is created and OCR then determines whether there is a legitimate, nondiscriminatory reason for the denial of benefit or other adverse action. OCR then examines the proffered reason to determine whether there is sufficient evidence to support a conclusion the proffered reason is actually a pretext for discrimination.

Preliminary Investigative Findings

The Complainant's son (Student) is a student diagnosed with autism. At the start of the 2015-16 school year, the Student began attending a new high school (School) in the District. At all times during the 2015-16 school year, the Student received educational services pursuant to an Individualized Education Plan (IEP) and receives specialized instruction in a self-contained classroom, separate from the general education population. He was with his peers without disabilities in the regular education setting 26% of the time.

On October 28, 2015, the Complainant emailed the Coordinator at the School, stating she would like to visit the Student at the School and requesting information about who to contact to facilitate her visit. The Coordinator responded to the Complainant that same day. In her response email, the Coordinator asked the Complainant to clarify whether she just wanted to "meet and talk" with the Student in school, or whether she wanted to observe the Student in his classroom. The Coordinator explained that classroom observations are not permitted at the School "due to HIPAA laws and protecting the privacy of other students," but stated that if the Complainant merely wanted to talk with the Student or eat with him during lunch, that could be arranged.

The Complainant responded to the Coordinator:

I am at a loss. I have always been an active part of my child's education and have been welcomed by teachers and schools. As for HIPAA, I worked in education for 11 years and that law was never designed to prevent parents from visiting schools. It is designed to protect student privacy records... This correspondence is truly disheartening. Schools are constantly complaining about apathetic parents and look at the roadblocks you're putting up to prevent me from being an active part of my child's education.

On October 30, 2015, the Coordinator emailed the Complainant, further clarifying the School's position to her. The Coordinator stated that the Board policy on visitors encourages parents to be "an active part of their child's education" however, the School,

must maintain an instructional environment and cannot allow observations that could be disruptive to that learning environment. We believe that due to the small, individualized setting, it is disruptive to the learners in a self-contained classroom.

The Coordinator invoked the confidentiality rights of other students as an additional reason for precluding the classroom observation with other students present. The Coordinator offered the Complainant a few alternatives to observing the Student in the classroom, stating the Complainant could observe the Student (1) in the general education setting, during his PE class,

(2) during meal-times, or (3) working individually with his teacher. The Coordinator indicated the Assistant Principal at the school would assist the Complainant with scheduling the visit.

The Complainant filed this OCR complaint three days later, on November 2, 2015.

Relevant District's Policies and Procedures

During the 2015-16 school year, Board Policy KK, **Visitors to District Property/Events**, stated in the relevant part:

Inappropriate Behavior

The Board encourages parents and other members of the public to visit district buildings and attend district events and activities; however inappropriate behavior or conduct will not be tolerated.

The **Administrative Procedures** on **Board Policy KK** state, in the relevant parts:

District Property

[...]

The Board wants and expects for our students and staff to have an environment that is safe, secure and stable and conducive to learning and teaching. As such, the Board and administration will not tolerate any person whose presence disturbs classes or district activities or hinders the instructional process, including any individual who disrupts or threatens to disrupt school or office operations, threatens the health or safety of students or staff, willfully causes property damage, or uses loud and/or offensive language that could provoke a violent reaction.

[...]

Observation During Instructional Time

The Raytown C-2 School District Board of Education encourages parents to be actively involved in the childrens' education. Further, Missouri law states a preference for continuing meaningful contact with parents. The district is also committed to maintaining an instructional climate that is conducive to student success. The district will only consent to such observations if it is possible to protect the legal privacy of other students in the classroom and the observation will not interrupt the educational process. Observations are subject to the following conditions:

1. All observations will be arranged in advance with the building administrator.
2. The district reserves the right to refuse any request for observation that is

deemed, inappropriate, excessive or detrimental to the instructional process.

3. The classroom teacher and building administrator or a certified designee shall be present throughout any and all observations.
4. The duration of the observation will be established at the time arrangements are made. The observation shall not exceed 45 minutes.
5. The individual conducting the observation and the observer shall not intervene and/or disrupt the instructional process.
6. Audio recorders and/or video cameras are not permitted.
7. During any time of the observation, the superintendent, principal or designee of either may require the observer to leave.

An internal procedure/guidance entitled **Self-Contained Classroom Observations from [sic] Parents/Guardians** states:

We do not approve parent requests to make “observations” within our self contained classrooms [emphasis in the original] - first and foremost is that each child has an IEP, this can violate confidentiality of the IEP children (since the children would identifiable as disabled). Here is further guidance to assist you with explaining to [sic] parent/guardian:

- Our Board of Education policy KK does allow us to limit observations ~ here is the quote within the policy that allows us to limit the type of observation: *“As such, the Board and administration will not tolerate any person whose presence disturbs classes or district activities or hinders the instructional process...”*
- We do not allow the self-contained setting to be observed ~ because it is a small, intimate instructional setting and it is more invasive to have a person observe in this type of classroom – so it is a disruption to this small learning environment.
- We need to ask a parent what they are hoping/wanting to see ~ our job is to see if we can set this up in some manner to allow them access for an observation for the specific behavior/instruction/interaction, etc. requesting to be observed.
- This could mean that we have the child in a 1-1 teaching setting (other students will stay in the SpEd classroom) but this gives the parent an opportunity to observe[.]

- FERPA allows parent to see their [sic] child but it does not allow them to observe other children (i.e. parent can't request to watch their [sic] child with another child because they want to see "what's going on between them...")

We can use verbiage like: "we are unable to allow you to observe in the self-contained classroom due to confidentiality of other children along with our Board policy that indicates observations cannot be disruptive to the learning environment; we are of the belief that due to the small individualized setting, it is disruptive to the learners BUT we do want to offer you options..."

Here are a few ideas for observation options: [emphasis in the original]

- ~ Specials class in general education
- ~ A time in which the student goes into a general education class for a certain subject
- ~ Create a setting that allows the teacher and individual student to be working together
- ~ Recess with general education students

OCR Interviews

OCR interviewed the Complainant on November 24, 2015. OCR interviewed parents of four other students in the Student's class on March 11, 2016. OCR interviewed the Coordinator, Assistant Superintendent, Vice Principal, the Student's special education teacher, the Student's PE teacher, and another special education teacher on April 19, 2016. OCR interviewed two other parents (Parent 1 and Parent 2) who requested to observe their children in self-contained special education classes in the District on May 25, 2017.

The Assistant Superintendent specified that the document entitled *Self-Contained Classroom Observations from [sic] Parents/Guardians* (guidance document) is not District policy. She explained that, unlike Board policies and administrative procedures, guidance documents are not reviewed and officially adopted by the Board. She stated there is no similar guidance for general education classroom settings.

The Vice Principal noted the guidance document has been in effect since 2008. The Vice Principal was able to recall two instances where parents observed general education students in their classroom settings, but no instances where parents observed special education students in their self-contained classroom setting.

The Coordinator stated that in the time she has worked at the School, there have been no incidents where a parent observation interrupted a class. However, she stated that students in self-contained classes have more severe disabilities and any minor change in their routines can

negatively affect the instructional climate. She recounted an experience in a different school where she witnessed a parent observation causing a disruption in a special education classroom.

The Student's teacher told OCR there are nine students in the Student's self-contained class. Each student is a student with a disability, receives special education services pursuant to an IEP and receives specialized instruction separate from the general education population in her self-contained classroom. She stated that several students may be distracted by a visitor.

Parent 1 told OCR that the middle school her child attends in the District refused her request to observe her child in his self-contained special education classroom, on the basis that allowing her to do so would violate the privacy rights of other students in the classroom.

Parent 2 told OCR that she has two children who receive special education services in the District. Her older child is a student in a self-contained classroom in a specialized school within the District. Her younger child is a student in a self-contained classroom in one of the District's general education elementary schools. The District has permitted Parent 2 to observe her older child in his self-contained classroom with other students present on multiple occasions, but denied her requests to observe her younger child in her classroom setting on the basis of the Family Educational Rights and Privacy Act (FERPA).

Voluntary Resolution Agreement

Prior to the completion of OCR's investigation, the District submitted a signed Agreement (copy enclosed) on March 12, 2018 that, when fully implemented, will address the allegation of this complaint. The Agreement requires the District to confirm in writing that it has rescinded the *Self-Contained Classroom Observations from [sic] Parents/Guardians* guidance document and distribute a written reminder to relevant District staff that said guidance is no longer in use, revise Board Policy KK and publish it after it has been approved by OCR, provide notice to relevant District staff detailing the changes to the District's classroom observation policies and the practical application of the changes, provide internal District training on the revised policy, and provide information about District determinations on parent observation requests to OCR for a full academic semester.

OCR considers this case resolved as of the date of this letter. OCR will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume its investigation or take other action.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR is committed to prompt and effective service. If you have any questions, please contact Elana M. Simha, General Attorney, at (816) 268-0536 (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at Elana.Simha@ed.gov.

Sincerely,

A handwritten signature in blue ink that reads "Anne Bradley". The signature is fluid and cursive, with a long, sweeping tail on the letter "y".

Anne E. Bradley
Acting Supervisory Attorney

Enclosure